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10/076,035	02/14/2002	L. Taizo Toelken	474-4	7398

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EXAMINER

PARSLEY, DAVID J

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 08/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/076,035

Applicant(s)

TOELKEN, L. TAIZO

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6,9-13 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-6,9-13 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Amendment

1. This office action is in response to applicant's amendment (paper no. 11) dated 6-24-03 and this action is final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2-6, 9-13 and 16-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 2, 9 and 16 include the limitation of an information portion having two steady and strong peaks. As seen in applicant's disclosure on page 13 lines 7-10 applicant does not know what the second peak corresponds to, and therefore it is not known what the second peak is or to what it pertains.

Claims 3, 5, 10, 12, 17 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the

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claimed invention. The limitation "...the single measurement and the information portion thereof excludes power information for times of time-of-flight slower than a benchmark corresponding to the time-of-flight value obtained in the absence of any egg or other object between the source and detector, which slower times of time-of-flight presumptively correspond to reflected noise...", is not supported in applicant's disclosure.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-6, 9-13 and 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2, 9 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims state that the information portion consists of two steady and strong peaks and it is unclear to what the information portion is and what the steady and strong peaks are in reference to the single measurement. Further these claims state a time-of-flight value from source to detector and is unclear to what this time of flight pertains.

Claims 3-6, 10-13 and 17-20 depend from rejected claims 2, 9 and 16 and include all of the limitations of claims 2, 9 and 16 thereby rendering these dependent claims indefinite.

Claims 3, 5, 10, 12, 17 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

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applicant regards as the invention. The term “presumptively” is an indefinite term making it unclear to whether the slower times of the time-of-flight correspond to reflected noise.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-4, 9-11 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,426,977 to Johnston et al.

Referring to claims 2, 9 and 16, Johnston et al. discloses a method and apparatus for determining whether avian eggs are qualified or unqualified for a premium quality based on shell characteristics, comprising, providing a plurality of eggs, oscillating the shells of each egg by a non-contacting source of ultrasonic waves – 34 to obtain a single measurement from the oscillating shells that is detectable by a non-contacting detector – see for example figure 1c and columns 1-6. Johnston et al. further discloses determining whether the egg is qualified or not from analysis of the single measurement – see for example columns 1-6, and wherein the single measurement comprises information comprising at least detected power as a variable against detected time-of-flight from source to detector and further comprising an information portion that is analyzed for a positive indication consisting of two sufficiently steady and strong peaks – see for example figure 1c and 3 and columns 1-6 where it is inherent that a processor is used to

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determine the condition of the eggs and it is inherent that the time of source to detector is detected in that as seen in figure 3 a graph versus frequency is shown and the frequency can be used to determine the time and therefore the output as shown in figure 3 can be used to determine time versus the detected power.

Referring to claims 3, 5, 10, 12, 17 and 19, Johnston et al. discloses the analysis comprises integrated response analysis of the single measurement and the information portion thereof excludes power information for times of time-of-flight slower than a benchmark corresponding to the time-of-flight value obtained in the absence of any egg or other object between the source and detector, which slower times of time-of-flight presumptively correspond to reflected noise – see for example figures 1c and 3 and columns 1-6.

Referring to claims 4, 11 and 18, Johnston et al. discloses the positive indication is correlatable to a given quality determination of egg shell quality which in turn is associated with such a quality determination of the avian egg as relating to fertility or hatching or hatchling viability, or alternatively as being of sufficient quality for human consumption – see for example columns 1-6.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 9-10 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,744,299 to Bliss or U.S. Patent No. 5,131,274 to Schouenborg in view of Johnston et al.

Referring to claims 2, 9 and 16, Bliss and Schouenborg disclose a method and apparatus for determining whether avian eggs are qualified or unqualified for a premium quality based on shell characteristics, comprising, providing a plurality of eggs, oscillating the shells of each egg by a source of ultrasonic waves – at 2-6 of Bliss and – at 106-107 of Schouenborg to obtain a single measurement from the oscillating shells that is detectable by a detector – see for example figure 1 of Bliss and figures 4-9 of Schouenborg. Bliss and Schouenborg further disclose determining whether the egg is qualified or not from analysis of the single measurement – see for example columns 1-2 of Bliss and Schouenborg, and wherein the single measurement comprises information comprising at least detected power as a variable against detected time-of-flight from source to detector and further comprising an information portion that is analyzed for a positive indication consisting of two sufficiently steady and strong peaks – see for example figures 3a-7d of Bliss and figures 4-7 of Schouenborg where it is inherent that a processor is used to determine the condition of the eggs. Bliss and Schouenborg do not disclose a non-contacting source and detector. Johnston et al. does disclose a non-contacting source and detector – at 34 and see figure 1c. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Bliss or Schouenborg and add the non-contacting source and detector of Johnston et al., so as to allow for the device to be less likely to cause harm to the eggs during use since the device does not touch the shell.

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Referring to claims 3, 5, 10, 12, 17 and 19, Bliss and Schouenborg as modified by Johnston et al. disclose the analysis comprises integrated response analysis of the single measurement and the information portion thereof excludes power information for times of time-of-flight slower than a benchmark corresponding to the time-of-flight value obtained in the absence of any egg or other object between the source and detector, which slower times of time-of-flight presumptively correspond to reflected noise – see for example figures 1 and 3a-7d of Bliss, figures 8-9 and columns 1-4 of Schouenborg and figures 1c and 3 and columns 1-6 of Johnston et al.

Referring to claims 4, 11 and 18, Bliss and Schouenborg as modified by Johnston et al. discloses the positive indication is correlatable to a given quality determination of egg shell quality which in turn is associated with such a quality determination of the avian egg as relating to fertility or hatching or hatchling viability, or alternatively as being of sufficient quality for human consumption – see for example columns 1-2 of Bliss and Schouenborg and columns 1-6 of Johnston et al.

Claims 6, 13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston et al. or Bliss or Schouenborg as modified by Johnston et al. as applied to claims 2, 9 and 16 above, and further in view of U.S. Patent No. 5,017,003 to Keromnes et al. Johnston et al. or Bliss or Schouenborg as modified by Johnston et al. does not disclose the eggs qualified for premium quality are graduated to hatchery operations. Keromnes et al. does disclose the eggs qualified for premium quality are graduated to hatchery operations – see for example column 1. Therefore it would have been obvious to one of ordinary skill in the art to take the method and apparatus of Johnston et al. or Bliss or Schouenborg as modified by Johnston et al. and add the

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premium eggs move on to hatchery operations of Keromnes et al., so as to make the process more efficient in that only the “good” eggs are further processed thus eliminating wasteful time and effort to process the “bad” eggs.

Response to Arguments

6. Regarding claim 2, the Johnston et al. reference does disclose analyzing a single measurement for detected power against time-of-flight for two steady and strong peaks as seen in figures 1c and 3 and columns 4-6 with figure 1c and columns 4-6 showing analyzing the measurement detected by the detector and figure 3 showing two peaks in a detected power against frequency, and as seen above in paragraph 4 of this office action the time can be determined from the frequency value.

Further, even if applicant's invention is distinguishable and different from the technology of Johnston et al. reference, the Johnston et al. reference still discloses applicant's claimed invention as seen above in paragraphs 4-5.

Further, applicant has stated in page 10 of the amendment (paper no. 11) and in the disclosure at page 13 lines 7-10 that it is unknown to what the second of the two peaks corresponds to and thus it is not known how the applicant knows that the Johnston et al. reference does not disclose the second peak of the two peaks if applicant does not know what the second peak represents.

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Further, the Johnston et al. reference discloses detecting problem eggs with salmonella and does state that the eggs scanned by the device cannot be moved to subsequent hatchery operations.

Regarding claim 3, Johnston et al. discloses the claimed invention as seen above in paragraph 4 of this office action.

Regarding claim 4, Johnston et al. discloses detecting problem eggs and the determination of the problem eggs can be used to determine fertility or hatchling viability in that eggs with the problems are not considered fertile or viable for any use.

Regarding claim 6, the Johnston et al. reference is combined with the Keromnes et al. reference to render the claims obvious as stated above in paragraph 5 of this office action.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

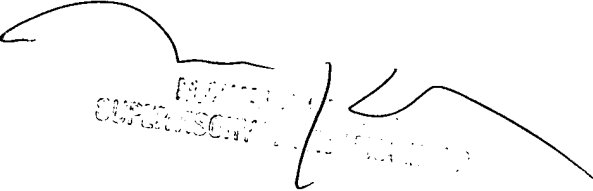
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.


SUPERVISOR